

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
3 ALEXANDRIA DIVISION

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4 UNITED STATES OF AMERICA )  
5 v. ) Case No. 1:14-mj-239  
6 WILLIAM ANDREW CLARKE, ) Alexandria, Virginia  
7 Defendant. ) May 27, 2014  
8 ) 2:39 p.m.  
9 )  
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11 TRANSCRIPT OF HEARING  
12 BEFORE THE HONORABLE JOHN F. ANDERSON  
13 UNITED STATES MAGISTRATE JUDGE  
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21 APPEARANCES:

22 For the Plaintiff: Matthew J. Gardner, Esq.  
23 For the Defendant: Karin R. Porter, Esq.  
24 Defendant William Andrew Clarke,  
in person

25 (Proceedings digitally recorded by the FTR system.)

## P R O C E E D I N G S

THE CLERK: *United States v. William Clarke*. Case  
No. 14-239-mj.

MS. PORTER: Good afternoon, Your Honor. Karin Porter  
on behalf of Mr. Clarke.

THE COURT: Thank you, Ms. Porter.

MR. GARDNER: Good afternoon, Your Honor. Matt Gardner  
for the United States.

THE COURT: Thank you. Good afternoon, Mr. Clarke.

Okay. The purpose of this hearing today, Mr. Clarke,  
is to inform you of the charge that's been brought against you  
and the penalty you face if found guilty of that charge.

We're also going to discuss setting this matter down  
for a preliminary hearing, if you want to have a preliminary  
hearing on this charge, and then we'll deal with the issue of  
detention.

Okay. You've retained Ms. Porter to represent you so I  
don't have to worry about the issues having to do with counsel.

So at this point I'll have counsel inform you of the  
charge that's been brought against you and the penalty you face  
if found guilty of that charge.

MR. GARDNER: Your Honor, Mr. Clarke has been charged  
in a one-count complaint with online coercion and enticement of  
a minor in violation of 18 U.S.C. 2422. The maximum penalties  
he faces are a minimum mandatory sentence of 10 years in custody

1 up to life in custody, a period of supervised release between  
2 5 years and up to life, a \$250,000 fine, a \$10 special  
3 assessment, as well as registration as a sex offender.

4 THE COURT: Okay. Thank you.

5 All right. Let me -- I've reviewed the information in  
6 the pretrial services report. Let me hear what the government's  
7 position is on detention before I hear from Ms. Porter.

8 MR. GARDNER: Your Honor, the government is not  
9 recommending detention in this case. The government believes  
10 that release along the lines of the recommendation in the  
11 pretrial services report is appropriate, including the GPS  
12 monitoring and release to the third-party custodian, Mr. Clarke,  
13 who Mr. Pet has spoken with and that he would be an appropriate  
14 third-party custodian.

15 THE COURT: All right. Okay. Ms. Porter, let me ask  
16 you a few -- do we want to set this matter down for a  
17 preliminary hearing or do you want to waive a preliminary  
18 hearing in this case?

19 MS. PORTER: Your Honor, we would ask the Court to set  
20 it for a preliminary hearing. If possible --

21 THE COURT: Have you-all talked about dates? You want  
22 to do it Thursday or Friday of this week?

23 MR. GARDNER: I'm fine with either. Actually, I won't  
24 be here, but I've spoken with someone in my office who can be  
25 here.

1 MS. PORTER: Would it be possible, Your Honor, to do it  
2 Thursday in the morning hours?

3 THE COURT: No. It would have to be -- duty is at  
4 2 o'clock. So it would be either be at 2 o'clock Thursday or at  
5 2 o'clock Friday.

6 MS. PORTER: Court's indulgence, one moment.

7 If we could do it Friday at 2 o'clock?

8 THE COURT: Is that okay with the government?

9 MR. GARDNER: That is. Thank you.

10 THE COURT: Okay. I'll go ahead and set this matter  
11 down for a preliminary hearing on Friday, 2 p.m.

12 MS. PORTER: Thank you.

13 THE COURT: Okay. Ms. Porter, what about the  
14 conditions of release that have been proposed by pretrial  
15 services?

16 MS. PORTER: Thank you, Your Honor. First, as a  
17 preliminary matter, Your Honor, Mr. James Clarke is present in  
18 the courtroom. If you could just rise --

19 THE COURT: Thank you, Mr. Clarke.

20 MS. PORTER: -- one moment.

21 Your Honor, he's an attorney. He's a member of this  
22 court as well as the Supreme Court of Virginia. He is the first  
23 cousin of my client, and he has been deemed suitable by pretrial  
24 services to be a custodian for my client.

25 Some background information on the home issue. I would

1 state to Your Honor that both my client and Mr. James Clarke own  
2 several properties together and they also reside together.  
3 There's a property in -- an apartment in Reston, Virginia, which  
4 is the primary residence in which Mr. James Clarke resides in  
5 Monday through Friday, and then he travels to Tappahannock,  
6 Virginia, where they have a river home down there as well as a  
7 rental property right next door.

8           So Mr. James Clarke does have a weekly schedule that  
9 has him working Monday through Friday and then going to  
10 Tappahannock on the weekends. I've spoken to Mr. Gardener and  
11 he does not have an objection for my client sort of shadowing  
12 that schedule with Mr. Clarke.

13           I would offer to Your Honor that Mr. Clarke, my client,  
14 has been in almost daily contact with me since he was arrested  
15 in Fairfax County on state charges. That was on or about  
16 October 10th of 2013.

17           There were state charges pending until April 9th of  
18 this year. He was released on bond, basically, the day of the  
19 bond motion, which was the next court date after his arrest, on  
20 a \$10,000 secured bond with no pretrial supervision. He's  
21 remained, like I said, in constant contact.

22           On April 9th at the preliminary hearing, by agreement  
23 between Mr. Gardner's office and the Commonwealth's Attorney's  
24 Office in Fairfax County, those state charges were nol-prossed  
25 and my client had no court restraint whatsoever.

1           He's not a flight risk, Your Honor. I would present to  
2 the Court that he was born and raised in Virginia. His parents  
3 are in Virginia, his brother, his cousin. He lives with his  
4 cousin. He also, Your Honor, has been gainfully employed up  
5 until the time he was put on administrative leave with Didlake,  
6 which is a company in which he works as the director of autism  
7 services which is company that provides employment services for  
8 people who suffer from autism, and that would be adults only.

9           Your Honor, we would ask the Court for the Court not to  
10 require the GPS monitoring in this case. And I would state,  
11 Your Honor, the basis for that would be, first of all, that my  
12 client has presented himself not to be a flight risk and there's  
13 been --

14           THE COURT: All right. So he's not a flight risk.  
15           What about danger to the community?

16           MS. PORTER: Yes, Your Honor.

17           THE COURT: These are very, very serious charges.

18           MS. PORTER: Yes, Your Honor. And I would submit to  
19 the Court that based on the allegations of the government in the  
20 affidavit, that this was a sting operation conducted by  
21 immigration and customs --

22           THE COURT: A sting operation. He didn't know he  
23 wasn't going to meet a father to have sex with the father's  
24 daughter. It may have been a sting operation, but he didn't  
25 know about it until he appeared there. So the idea that that

1 somehow diminishes the danger to the community, I don't see it.

2 MS. PORTER: Yes, Your Honor. I understand your  
3 position. I was just offering the other mitigating  
4 circumstances in this case so Your Honor could make an informed  
5 decision. And we would offer that the point of pretrial release  
6 conditions is to offer the least restrictive measures to ensure  
7 the safety of the community and, of course, as well as the -- to  
8 secure the appearance of the defendant.

9 And I think, Your Honor, that thus far, my client has  
10 proven himself not to be a danger to the community. He has  
11 absolutely no arrest record. He's 43 years old. He was  
12 evaluated by Dr. Anita Boss in November who determined him to be  
13 a low risk of recidivism, as well as he's seeking treatment  
14 through Dr. Ronald Weiner in Silver Spring, Maryland, on a  
15 weekly basis, Your Honor.

16 So given the circumstances, I would suggest to the  
17 Court that GPS monitoring is just not necessary, Your Honor. We  
18 would ask you not to order that condition.

19 THE COURT: Okay. All right. Well, Mr. Clarke, would  
20 you please stand.

21 Mr. Clarke, as you've heard me say before, the charge  
22 that's been brought against you is a very, very serious one.  
23 It's not often that the Court lets people out on conditions of  
24 release given the serious nature of a charge like this. But  
25 given the recommendation by pretrial services and with the

1 agreement of the government, I am going to allow you to be  
2 released on certain conditions of release.

3           You do need to understand that if you violate these  
4 conditions of release in any way whatsoever, you'll be brought  
5 back into court and you'll be remaining in custody pending the  
6 trial of the case.

7           You understand that?

8           THE DEFENDANT: Yes, Your Honor.

9           THE COURT: Okay. All right. And I think you need to  
10 understand that these conditions, while serious, are better than  
11 being in jail. That, you know, you should be thankful your  
12 lawyer has been able to negotiate any conditions of release in  
13 this case, much less getting special -- even more special  
14 treatment. But I'm going to go ahead and allow you to be  
15 released on a personal recognizance bond on the following  
16 conditions.

17           You'll be required to report to pretrial services as  
18 directed.

19           You're to be released to and reside in the third-party  
20 custody of Mr. James Clarke.

21           You're not to move from that residence without prior  
22 approval of pretrial services or the Court.

23           You're to refrain from having any contact with minors  
24 under the age of 18 unless another adult is present who's been  
25 approved in advance by pretrial services.



1           You're to refrain from possessing or having access to a  
2 computer or the Internet unless related to employment as  
3 directed pretrial services. And that also -- and that access to  
4 the Internet means smartphones and things like that as well. So  
5 you're going to need to talk to your pretrial services officer  
6 about that.

7           You're to refrain from possessing or utilizing any  
8 video gaming system or console, phones with Internet  
9 capabilities, or other devices which would enable contact or  
10 sharing data with other individuals known or unknown to the  
11 defendant.

12           You're to submit to and pay for sex offender evaluation  
13 and treatment conducted by a certified sex offender treatment  
14 provider as directed by pretrial services.

15           You're to notify your current or future employers of  
16 the charged offense as directed by pretrial services.

17           You're to refrain from possessing or having access to  
18 any firearms, destructive devices, or other dangerous weapons as  
19 directed by pretrial services.

20           I am going to require you to submit to and pay for home  
21 detention with active GPS monitoring with time-outs as directed  
22 by pretrial services.

23           I'm not allowing you -- I'm not ordering that you be  
24 allowed to go to Tappahannock, Virginia, on the weekends.  
25 That's something that pretrial services is going to have the

1 discretion to do. The idea of you being monitored in two  
2 separate locations, you know, I'm not sure that's feasible by  
3 pretrial services.

4 But you'll be released to the third-party custodian of  
5 Mr. Clarke and if you can work it out with pretrial services for  
6 those to be monitored and go from that location to another for  
7 certain time periods. But, you know, I'm concerned, and I don't  
8 know what the location is in Tappahannock, whether it's near a  
9 beach or things like that, but I'm concerned, and it would have  
10 to be approved by pretrial services before you go there so that  
11 they can do a site visit and understand what the situation is  
12 and what you would be exposed to and what other people would be  
13 exposed by having you there. So those are the conditions that  
14 I'll allow you to be released under.

15 Again, I caution you. If you violate those conditions  
16 in any way whatsoever, you'll be brought back into court and  
17 you'll be remaining in custody. You understand that?

18 Ms. Porter, do you have any questions at this time?

19 MS. PORTER: No, Your Honor. Thank you.

20 THE COURT: I'll see you back in court on Friday  
21 afternoon at 2 p.m. So you'll be released here today, required  
22 to be back here in court on Friday for a preliminary hearing.

23 Okay. Anything else from the government?

24 MR. GARDNER: No, Your Honor. Thank you.

25 THE COURT: Thank you, sir. You should meet with your

1 pretrial services officer before you leave the courthouse here  
2 today. Wait a minute or two and then you'll be able to meet  
3 with your pretrial services officer, okay --

4 MS. PORTER: Thank you, Your Honor.

5 THE COURT: -- following court.

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7 (Proceedings concluded at 2:50 p.m.)

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CERTIFICATION

I certify, this 2nd day of July 2015, that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter to the best of my ability.

/s/

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Tracy Westfall, RPR, CMRS, CCR